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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,561	11/16/2000	Gregory Ashton	AA315X/KL	6013

27752 7590 11/29/2002

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

GRAYSON, ANGELA J

ART UNIT	PAPER NUMBER
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3765

DATE MAILED: 11/29/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/700,561

Applicant(s)

ASHTON ET AL.

Examiner

Angela J. Grayson, Esq.

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Application filed on 11-16-2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 3765

DETAILED ACTION

Specification

1. The application is objected to because of alterations in the specification and claims 2, 3, and 6 which have not been initialed and/or dated as is required by 37 CFR 1.52(c). A properly executed oath or declaration which complies with 37 CFR 1.67(a) and identifies the application by application number and filing date is required.

2. The amendment to the claims filed on 11-16-200 with the application does not comply with the requirements of 37 CFR 1.121(c) because the amendment were handwritten without an initial, a date, or an attached oath/declaration. Amendments to the claims filed after March 1, 2001 must comply with 37 CFR 1.121(c) which states:

(c) Claims.

(1) Amendment by rewriting, directions to cancel or add: Amendments to a claim must be made by rewriting such claim with all changes (e.g., additions, deletions, modifications) included. The rewriting of a claim (with the same number) will be construed as directing the cancellation of the previous version of that claim. A claim may also be canceled by an instruction.

(i) A rewritten or newly added claim must be in clean form, that is, without markings to indicate the changes that have been made. A parenthetical expression should follow the claim number indicating the status of the claim as amended or newly added (e.g., "amended," "twice amended," or "new").

(ii) If a claim is amended by rewriting such claim with the same number, the amendment must be accompanied by another version of the rewritten claim, on one or more pages separate from the amendment, marked up to show all the changes relative to the previous version of that claim. A parenthetical expression should follow the claim number indicating the status of the claim, e.g., "amended," "twice amended," etc. The parenthetical expression "amended," "twice amended," etc. should be the same for both the clean version of the claim under paragraph (c)(1)(i) of this section and the marked up version under this paragraph. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. A marked up version does not have to be supplied for an added claim or a canceled claim as it is sufficient to state that a particular claim has been added, or canceled.

(2) A claim canceled by amendment (deleted in its entirety) may be reinstated only by a subsequent amendment presenting the claim as a new claim with a new claim number.

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Art Unit: 3765

4. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Clarification is required as to what is meant by "disposed so as to form a composite side elastic network extending between the waist opening and the leg opening."

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-5; 8-16; 19-29 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 96/31179 to Ashton.

Art Unit: 3765

As to claims 1 and 11, Ashton discloses a disposable garment having a front, back, and crotch region (Figure 1 members 26, 28, 30), disposable garment comprising a chassis having a topsheet (Figure 1 member 80), backsheet (member 40), and core (Figure 3 member 84) interposed between; chassis having a central panel (Figure 1A member 56) with a waist edge and side edges (members 72, 72', 70, 70'), an ear panel having a waist edge and a waistband panel in front and back region (member 64), wherein the ear panel extends laterally outwardly from each side edge of the central panel, and the waistband panel extends longitudinally outwardly from the waist edge of the central panel and the waist edge of the ear panel; a waist elastomeric material joined to and extending continuously along the waistband panels in the front and back region so as to form a continuous extensible waistband in the front and the back region (Figure 1 member 38; page 7 1st full ¶), a side elastomeric material joined to the ear panel so as to form extensible ears (Figure 1 members 46,48), wherein the side elastomeric material and the waist elastomeric material are separate elements and are disposed to not overlap each other (page 8 line 1 discloses the garment of Ashton is comprised of panels; Figure 1A members 64,60), and seams joining each ear panel to a corresponding portion in the opposite region so as to form two leg openings as a waist opening such that the extensible waistbands form a continuous extensible waist feature (Figure 1 member 32); the continuous belt zone is extensible in an extension range up to an extension of at least about 125%, the continuous belt zone has a modulus of extensibility in the extension range, the modulus of extensibility at the extension of 125% is not greater than about 150g/% extension and the force to obtain the extension

Art Unit: 3765

of 125% is not greater than 5,000g (Figures 12-14; page 20 1st full ¶ - page 21 2nd full ¶).

As to claims 2 and 19, Ashton discloses an absorbent article wherein the waistband panel has an original length before the waist elastomeric material is joined thereto, wherein the continuous extensible waistband is rendered extensible such that the continuous extensible waistband extends beyond the original length of the waistband panel. (Page 17 1st full ¶).

As to claims 3 and 4, Ashton discloses an absorbent article wherein at least part of the waist elastomeric material is prestrained before joined to the waistband panel; wherein the extensible ear is formed from a zero strain stretch laminate. (Page 18 2nd ¶).

As to claim 5, Ashton discloses an absorbent article wherein the waist elastomeric materials comprise two separate elements, one of which is joined to the waistband panel in the front region, the other is joined to the waistband panel in the back region, wherein the two elements are connected to each other at the seams. (Figure 1 members 44, 46, 32).

As to claims 8 and 9, Ashton discloses an absorbent article wherein the extensible waistband comprises an extended portion of the outer over and the waist elastomeric material; wherein the extensible ear comprises an extended portion of the outer over and the waist elastomeric material. (Figure 1 members 38, 50, 22; Figure 1A member 64).

Art Unit: 3765

As to claim 10, Ashton discloses an absorbent article wherein the waist elastomeric material is superposed inside an innermost surface of the garment (Figure 3 member 78).

As to claims 12-17, Ashton discloses an absorbent article wherein the modulus of extensibility in the extension range up to the extension of about 125% is not greater than about 150 g/% extension; modulus of extensibility at the extension of 135% is not greater than about 200 g/% extension; modulus of extensibility at the extension of 125% is not greater than about 120 g/% extension; modulus of extensibility in the extension range up to the extension of about 125% is not greater than about 120 g/% extension; the force to obtain the extension of 125% is not greater than about 4,500g. (Figures 12-14; page 20 1st full ¶ - page 21 2nd full ¶).

As to claim 20, Ashton discloses an absorbent article wherein the chassis has a central panel having side edges, and an ear panel extending laterally outwardly from each side edge of the central panel in the front region and the back region, wherein the ear panel is joined the side elastomeric material to form an extensible ear, wherein the extensible ear is formed from a zero strain stretch laminate. (Figure 1; page 18 2nd ¶).

As to claims 21-27, Ashton discloses disposable garment of the type worn about the torso of a wearer, the garment having a front region, a back region, a crotch region between the front region and the back region, a waist opening, and leg openings (Figure 1), wherein the garment has a zone of extensibility comprising a side elastomeric material and a waist elastomeric material (Figure 1 members 44,46,50), wherein when the garment is applied to a standard mannequin, the skin contact pressure of the side

Art Unit: 3765

elastomeric material and the waist elastomeric material pressing on the skin of the standard mannequin is not greater than about 0.75 psi; not less than 0.1 and not greater than about 0.65 psi (page 40 1st ¶).

As to claims 28 and 29, Ashton discloses disposable garment wherein the side and waist elastomeric material is in the form of a continuous plane layer. (Figure 1).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashton.

As to claims 17 and 18, Ashton discloses a continuous belt zone but fails to disclose wherein the zone has an initial circumference of between about 220 mm and

Art Unit: 3765

about 500mm; extensible up to a circumference of at least 650 mm. It would have been obvious to one having ordinary skill in the art at the time the invention was made to define the continuous belt zone has having an initial circumference of between about 220 mm and about 500mm; extensible up to a circumference of at least 650 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

12. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Ashton in view of US Patent No. 4,646,362 to Heran.

As to claim 7, Ashton discloses an absorbent article but fails to disclose wherein the backsheet comprises an inner barrier film and a nonwoven outer cover, and wherein the nonwoven outer cover is superposed outside the inner barrier film. However, Heran discloses a multilayer backsheet having an inner layer of plastic material and an outer layer of nonwoven fibrous material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Ashton with the multilayer backsheet of Ashton suggests a traditional backsheet may be incorporated (page 14 2nd full ¶). Although Ashton notes "an additional layer" such as a traditional backsheet may be used, Ashton goes on to note, page 41 last ¶, that "various other changes and modifications can be made without departing from the spirit and scope of the invention).

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 6,443,940 to Ashton; 5,685,874 to Buell;


Art Unit: 3765

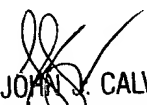
5,246,433 to Hasse; 6,432,243 to Popp; 6,042,673 to Johnson; 5,931,827 to Buell;
5,607,537 to Johnson.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Angela J. Grayson, Esq. whose telephone number is 703-305-1806. The examiner can normally be reached on Monday-Thursday from 9:30 am to 7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.

Angela J. Grayson, Esq. 
November 20, 2002


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700